



POLICE DEPARTMENT

January 18, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael Feltham
Tax Registry No. 924353
Narcotics Borough Bronx
Disciplinary Case No. 85026/09

Sergeant Edward Vargas
Tax Registry No. 905216
Narcotics Borough Bronx
Disciplinary Case No. 85027/09

The above-named members of the Department appeared before the Court on May 6, 2010, and October 25, 2010, charged with the following:

Disciplinary Case No. 85026/09

1. Said Detective Michael Feltham, assigned to Narcotics Borough Bronx, on or about September 17, 2007, at a location known to this Department, in Bronx County, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Detective improperly filed an application for a search warrant in Bronx Criminal Court that contained inaccurate information.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Detective Michael Feltham, assigned as indicated in Specification #1, on or about September 17, 2007, at a location known to this Department, in Bronx County, while on-duty, did wrongfully cause false entries to be made in Department records, to wit: said Detective improperly prepared Department paperwork relating to a narcotics sale involving a Confidential informant.

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY –
PROHIBITED CONDUCT

COURTESY • PROFESSIONALISM • RESPECT

3 Said Detective Michael Feltham, assigned as indicated in Specification #1, on or about and between September 17, 2007 and September 20, 2007, at a location known to this Department, in Bronx County, while on-duty, did fail and neglect to timely prepare a Property Clerk's Invoice Worksheet, to wit said Detective failed to voucher a controlled substance until several days after it was taken into police custody

P G 218-01, Page 1, Paragraph 3 INVOICING PROPERTY –
GENERAL PROCEDURE

4 Said Detective Michael Feltham, assigned to Narcotics Borough Bronx, on or about and between September 17, 2007 and September 20, 2007, at a location known to this Department, in Bronx County, while on-duty, did fail and neglect to ensure that a controlled substance was timely transmitted to the lab for testing to wit said Detective failed to timely submit a controlled substance to the lab until several days after it was taken into police custody

P G 218-04, Page 1, Paragraph 1 TRANSMITTAL OF CONTROLLED
SUBSTANCES/MARIJUANA
AND FIREARMS EVIDENCE TO THE LAB

Disciplinary Case No 85027/09

1 Said Sergeant Edward Vargas, assigned to Narcotics Borough Bronx, on or about and between September 15, 2007 and September 20, 2007, at a location known to this Department, in Bronx County, while on-duty, did wrongfully and without just cause fail to supervise other members of the service under his supervision to wit said Sergeant failed to ensure that paperwork was properly prepared by members of service including but not limited to the application for a search warrant, and paperwork relating to a narcotics sale involving a Confidential Informant

P G 202-17, Page 1, Paragraph 1 PATROL SUPERVISOR –
DUTIES AND RESPONSIBILITIES

2 Said Sergeant Edward Vargas, assigned as indicated in Specification #1, on or about September 15, 2007, at a location known to this Department, in Bronx County, while on-duty, did fail and neglect to ensure that said Sergeant was physically present at all meetings between a contact officer and a Confidential Informant to wit said Sergeant was present at a narcotics sale with a Confidential Informant without the contact officer being present, as required (*As amended*)

P G 212-68, Page 6 (Note) CONFIDENTIAL INFORMANTS

3 Said Sergeant Edward Vargas, assigned as indicated in Specification #1, on or about and between September 15, 2007 and September 20, 2007, at a location known to this Department, in Bronx County, while on-duty, did fail and neglect to timely prepare a Property Clerk's Invoice Worksheet, to wit said Sergeant failed to voucher a controlled substance until several days after it was taken into police custody (*As amended*)

P G 218-01, Page 1, Paragraph 3 INVOICING PROPERTY –
GENERAL PROCEDURE

4 Said Sergeant Edward Vargas, assigned as indicated in Specification #1, on or about and between September 15, 2007 and September 20, 2007, at a location known to this Department, in Bronx County, while on-duty, did fail and neglect to ensure that a controlled substance was timely transmitted to the lab for testing to wit said Sergeant failed to timely submit a controlled substance to the lab until several days after it was taken into police custody

P G 218-04, Page 1, Paragraph 1 TRANSMITTAL OF CONTROLLED
SUBSTANCES/MARIJUANA
AND FIREARMS EVIDENCE TO THE LAB

The Department was represented by Beth Douglas, Esq , Department Advocate's Office
Respondent Feltham was represented by James Moschella, Esq , and Respondent Vargas was represented by John D'Alessandro, Esq

The Respondents, through their counsel, entered a plea of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

Respondent Feltham is found Guilty of Specification Nos 1, 2 and 4, and Not Guilty of Specification No 3 Respondent Vargas is found Not Guilty of Specification No 1, and Guilty of Specification Nos 2-4

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Michael Corbett and Inspector Edward Mullane

Detective Michael Corbett

Corbett was an investigator in the Internal Affairs Bureau (IAB) Corbett's investigation of the Respondents began after IAB received an anonymous letter stating that Respondent Feltham was obtaining search warrants improperly The alleged impropriety was that there were narcotics purchases made using a confidential informant (CI) to get the warrant, but Respondent Feltham had not actually been present for the buy The letter alleged that Respondent Vargas "was doing the buys himself " The letter alleged that these buys were taking place in September 2007

Corbett testified that he examined roll calls, along with CI activity and payments, primarily for the month of September 2007 There was a DD-5 (see Department's Exhibit [DX] 2), signed by Respondent Feltham with Respondent Vargas signing as the supervisor There was another DD-5 recording payment to the CI (DX 3) These both indicated that a buy using a CI was performed on Saturday, September 15, 2007 The roll call (see DX 5, roll calls and movement sheets), however, indicated that Respondent Feltham had a regular day off (RDO) that day His memo book and employee time record also indicated that he was RDO on September 15, 2007 He stated in his official Department interview that he prepared these DD-5s on Monday, September 17, 2007, even though both were dated two days prior

Corbett explained that DX 2 stated that Respondent Vargas was present with the CI. But the DD-5 then stated that Respondent *Feltham* gave the CI \$10 and instructed him to attempt a narcotics purchase at the location.

Corbett testified that at "the PG, it was confirmed that the buy was done alone, by" Respondent Vargas. The September 15, 2007, movement sheet for Respondent Vargas indicated that he was performing a CI buy that day.

Corbett testified that Respondent Feltham was the designated contact officer for the CI in question. Detective Rosario was designated as the alternate. Corbett averred that Patrol Guide § 212-68, in the Note on page 6, mandates the supervisor's presence at any contact between the CI and contact officer.

Corbett stated that crack cocaine was recovered and field-tested positive for the buy on September 15, 2007. In his official Department interview, Respondent Vargas stated that he brought the crack to Narcotics Borough Bronx (NBBX or Bronx Narcotics) and placed it in the Respondents' module "locker slash safe" (the "locker"). Because this locker was for use only by the Respondents' module, perhaps six to seven people had access to it.

The narcotics were not vouchered on September 15, 2007, however. Respondent Vargas told Respondent Feltham that the crack was there. Corbett "was informed" during his investigation that Respondent Feltham vouchered the drugs on September 17, 2007 (see DX 4, Property Clerk's Invoice). Corbett checked the voucher log, which showed when the vouchers were pulled, to verify this. Respondent Feltham told Corbett that he placed the narcotics back in his locker so that a supervisor could sign the voucher the next day. Corbett testified that upon Respondent Vargas's first day back from his RDOs, Tuesday, September 18, 2007, he signed the voucher and placed the crack back in the locker.

Corbett verified from the 46 Precinct command log that Respondent Vargas brought the evidence there, the precinct of occurrence, on September 20, 2007. From the 46 Precinct, it arrived at the lab early the next day. Corbett testified that evidence should be vouchered and transmitted to the lab "as soon as possible."

Corbett stated that on September 17, 2007, Respondent Feltham was working but Respondent Vargas was not. That day, Respondent Feltham went to the Bronx District Attorney's (DA) Office to obtain a search warrant. "It was during the PG hearing that I was informed that" the detective prepared the warrant application, DX 1. The application also referred to a buy that took place on Thursday, September 13, 2007. The DD-5 for this first buy, Respondents' Exhibit [RX] A, stated that both Respondents were present.

Corbett pointed out an inaccuracy in the search warrant application. On page 3, in the last full paragraph, Respondent Feltham wrote that Respondent Vargas was present with the CI, but that "the deponent," i.e., himself, gave the CI the buy money and sent him to the target premises to purchase drugs.

Corbett testified that the search warrant was issued on September 17, 2007. The issuing judge asked Respondent Feltham if he read the warrant application and was aware of the results. Respondent Feltham said yes (see RX B, transcript of warrant proceeding).

The warrant was executed and three people were arrested. Two of the defendants had their cases sealed upon arraignment. The third defendant pleaded guilty to seventh-degree criminal possession of a controlled substance, a misdemeanor, and received a conditional discharge.

On cross-examination, Corbett stated that he viewed the anonymous letter that kicked off the investigation as alleging perjury, because it alleged that Respondent Feltham was not present for the buys but was swearing in court that he was. His RDOs were September 15 and 16, 2007.

Corbett admitted that Patrol Guide § 212-68 did not specifically state that the contact officer must always be present for CI activity. It did specifically prohibit the contact being present without a supervisor. Corbett agreed that the procedure anticipates the possible absence of the contact, but that the alternate is mentioned for that purpose. Corbett noted that the procedure, on page 6, "indicates that a supervisor must be present at all meetings, whether it's an alternate or a primary." His interpretation was that this meant either the supervisor and the contact, or the supervisor and the alternate, must be present.

Corbett agreed that with regard to transmittal of evidence to the lab, "as soon as possible" depended on the circumstances. He was asked whether, if an officer made a CI buy, "they get the drugs, and then they get tied up with several other very major investigations and the drugs stay in the safe for a couple of days, and as soon as they get a chance, they get them and take them to the lab," this would qualify as "as soon as possible." Corbett "would guess it could be interpreted that way" in the beginning of September 2007. The process had been changed since then, Bronx Narcotics now had its own safe.

Corbett agreed that Respondent Feltham prepared the voucher in a timely manner on his first day of duty after the second buy, Monday, September 17, 2007. He then returned the drugs to the locker. The voucher should have been prepared, however, on the 15th, by someone else that was working that day. Corbett conceded that this was not Respondent Feltham's responsibility. The evidence could not be sent to the lab without a supervisor's signature, and

the supervisor that actually received the drugs – Respondent Vargas – was not returning to work until Tuesday, September 18, 2007

Corbett examined the CI's folder and it was "quite extensive [P]robably one of the largest in Bronx Narcotics " Corbett agreed that this was the only case he reviewed for the Respondents in which problems were found

Corbett agreed that in the last full paragraph on page 3 of the warrant application, Respondent Feltham "apparently misuses" the word deponent in stating he gave the CI the buy money Corbett agreed that Respondent Feltham wrote, in the paragraph for the first buy, that "the deponent was present with the CI in the vicinity" of the location, but that "Sergeant Edward Vargas was present with the CI" for the second buy Thus, Respondent Feltham "distinguished" that he was present at the first buy and not the second The remainders of the two paragraphs were identical

Respondent Feltham stated in his official Department interview that he went to the DA's Office and met with an assistant district attorney (ADA) The detective, however, was unaware of the word deponent" and typed up the affidavit "so that it could get put in front of a Judge" in a timely manner Otherwise, due to the hectic activity at the DA's Office, it would not have happened Usually, Corbett said, the ADA wrote the application Nothing in Corbett's investigation revealed that he told the ADA that he was present at the second buy Respondent Feltham stated that he cut-and-pasted from previous works, and in fact copied the first-buy paragraph into the second-buy section The two DD-5s contained the same errors The first read that both Respondents were present for the first buy, the second read that Respondent Vargas was present for the second buy, but that Respondent Feltham gave the CI the buy money Otherwise, the language of the two DD-5s appeared to be verbatim with each other

Corbett agreed that no one tried to hide the fact that Respondent Feltham did not work on September 15, 2007. Neither the roll call nor movement sheet indicated his presence, or his leaving the command to perform a controlled buy.

On re-direct examination, Corbett testified that "[i]deally you want" additional personnel when acting with a CI in case something goes wrong.

Corbett agreed that the entire module had access to the locker, although he had agreed on cross-examination that it was 'controlled by a supervisor.' Corbett stated that prior to the vouchering of the narcotics, only the Respondents would know what activity the drugs pertained to.

Corbett testified that Respondent Vargas admitted in his official Department interview that the evidence should have been transmitted to the lab, at the earliest, on Tuesday, September 18, 2007, the day he returned from his RDOs. Corbett testified that the drugs should have been transmitted on the 15th (i.e., Respondent Vargas should have assigned someone to do the vouchering and transmitted the evidence the same day).

Inspector Edward Mullane

Mullane had been the commanding officer of Bronx Narcotics since March 2008. He testified that, during controlled narcotics buys, "usually a supervisor, handler and a witness" were present. He was not aware of occasions when a supervisor was allowed to go alone with a CI. This was for reasons of safety and integrity. Police action might become necessary from the officers waiting outside. Also, it was important to verify the exchange of drugs.

Mullane testified that in 2007, the procedure for transmittal of narcotics evidence obtained in a CI buy was 'a lot looser.' It could be three to five days before drugs were brought

to the lab. Drugs would be safeguarded at the discretion of the team or supervisor, then would be brought to the relevant precinct or the lab.

At the time of trial, however, there was a new procedure, and drugs were transmitted "a lot more expeditiously." Now, evidence was obtained and transmitted to the lab by the precinct. There was a safe at the command that got emptied at midnight, its contents brought to the patrol borough, and brought to the lab from there. The idea was to have the drugs analyzed in a timely fashion.

On cross-examination, Mullane testified that there was always a supervisor, handler, and witness on narcotics buys. Narcotics work, however, required flexibility. He agreed that Interim Order 23 did not say that the contact officer always had to be present. However, for a supervisor to go alone with a CI "would invalidate the spirit of the law."

Mullane interpreted failure to supervise as generally "something more heinous" than missing typographical or spelling errors.

Mullane stated that it would have been "fine" in September 2007 if drugs, prior to being transmitted to the lab, were "locked up somewhere secure." Counsel asked him if, in September 2007, "the policy was to secure them in a locked locker in the building, and then transport them to the lab as soon as possible." Mullane stated that this "seemed to be pretty accurate." He agreed that Respondent Vargas committed no infraction if he followed this procedure, [b]ased on the scenario you just laid out."

The Respondents Cases

The Respondents called Captain Lorenzo Johnson and Ignacia Evelyn Baez. They also each testified on their respective behalves.

Captain Lorenzo Johnson

Johnson was the commanding officer of Group 4 in Narcotics Borough Bronx (NBBX). At the time of trial, he was the commanding officer of the Bronx Gang Squad. The Respondents were under his command for a little less than a year. Respondent Vargas was in charge of the 46-02 module, which covered the 46 Precinct and another precinct as well. Johnson said this was unusual, and that not many sergeants covered two precincts. Whether a sergeant was allowed to do so was determined in part on his work ethic. Johnson called Respondent Vargas one of the best sergeants he had worked with.

Johnson was aware of nothing in the Patrol Guide that prohibited Respondent Vargas from making a controlled buy with a CI but "without a police officer present." Johnson was shown the sentence in the "Scope" part of page 2 of Interim Order 23, reading, "All use of the confidential informant must be conducted exclusively through the member of the service designated as the contact, the contact's immediate supervisor, or if they are unavailable the designated alternate." He believed this meant that the order contemplated that the contact officer would not always be available.

Johnson said that in September 2007, it was a common practice to leave purchased narcotics in a "secured locker" at the command. The "policy" had since been changed, and there was now a "narcotics locker" there.

Johnson called the CI here 'very lucrative' estimating that about 80 search warrants had been executed successfully as a result of his assistance. Johnson was unaware of any other discrepancies in the Respondents' paperwork relating to any CI. Knowing both Respondents, and that they were hard workers and a pleasure to supervise, Johnson had no reason to believe they were trying to deceive anybody. He had no questions about their integrity and neither did other supervisors.

On cross-examination, Johnson stated that a supervisor, or "a second set of eyes," should review a member's warrant application.

Johnson agreed that generally, the safety of the CI "should be preserved where more than one Member of Service is there to watch and be the eyes and ears behind that" CI. Sometimes, however, "unfortunately we don't have that ability."

Johnson testified that when narcotics evidence was taken into custody, it should be vouchered "as quickly as possible." Circumstances sometimes arose, however, "that warrant that it couldn't have been" vouchered "upon the time" the evidence was recovered. In September 2007, the evidence was supposed to be brought to the 47 Precinct because that was where the Bronx Narcotics command was located.

On re-direct examination, Johnson testified that during his tenure in Bronx Narcotics, overtime caps and workload were factors in the processing of evidence. It was common for a supervisor to tell someone to leave evidence in "this locker" and do the paperwork the next day. Johnson agreed that in a long-term investigation, narcotics evidence would not necessarily need to be tested at the lab "immediately."

Upon questioning by the Court, Johnson stated that the fact that a supervisor was in charge of evidence that had not yet been vouchered was critical. It would be a different situation

if a Police Officer on patrol recovered evidence, put it in her locker, went RDO, and vouchered the evidence the first day back from work, three days later

Ignacia Evelyn Baez

Baez was a New York State assistant attorney general at the time of trial. From August 2000 to February 2008, she was an assistant district attorney in Bronx County. After about two-and-a-half years, she was assigned to the Narcotics Bureau. She knew Respondent Feltham from her work in the DA's Office, both in the complaint room (where criminal complaints are written up for arraignment) when he was a police officer, and as a detective. She estimated that she had worked on hundreds of cases with him, preparing 50 to 100 search warrants. He did good work and had a reputation for thoroughness. The ADA had an easier task if the officer was better prepared. She never had reason to question his integrity.

Baez testified that there was a requirement for a CI to make two buys, preferably within a fortnight's span, to obtain a search warrant. There was no requirement for the affiant to be present at each purchase, he could use the term "informed by" instead. Baez testified that "as long as what was done was done," Respondent Feltham would not be required to be present with the CI at the time of purchase.

Baez testified that Narcotics ADAs were assigned to search-warrant duty for a week at a time. She had this once a month. She described the process as "very hectic." Officers wanted to get their warrants signed before 2:00 p.m., as did Baez, because the morning judge was the regular warrant judge and "knew the process and it would go a lot quicker." Sometimes, officers wrote up their own affidavits, and Respondent Feltham was one such officer.

Baez's normal practice was to examine an officer's pre-written affidavit and check it for accuracy and typographical errors. She would go over it with the officer and the CI. Baez, however, recalled September 17, 2007, as a day that she did not follow her regular procedure. She had been diagnosed with cancer and was feeling unwell. The day itself was unusually busy. Baez did not recall speaking with Respondent Feltham "beyond a high five, let's get to a judge." She did not make any changes to the document.

Baez testified that generally, the CI went with her to talk to the judge when obtaining the warrant. She believed that occurred in this case.

On cross-examination, Baez admitted that she wanted the affidavit to be true and accurate. She did not know if officers were still allowed, at the time of trial, by either the Department or the DA's Office, to pre-type their own affidavits.

On re-direct examination, Baez stated that she did not recall whether Respondent Feltham suggested to her that he was present with the CI on the second buy. It was clear to her that Respondent Vargas handled the CI on that buy, not Respondent Feltham. She was never informed that any criminal case was adversely impacted as a result of these errors.

Respondent Feltham

Respondent Feltham had been assigned to Bronx Narcotics for approximately six years. He was an investigator there, and one of his jobs was to obtain search warrants. He had been a Detective for five-and-a-half years. As a Police Officer, he was assigned to the 46 Precinct.

Respondent Feltham's Narcotics module was for the 46 Precinct. In September 2007, he was working on a long-term investigation with the Drug Enforcement Administration, and performing buy-and-bust operations three or four days a week. He obtained perhaps four search

warrants that month. Other team members obtained warrants as well. The team utilized CIs, and Respondent Feltham was the handler for one. He used this CI three to four days a week. Every search warrant they obtained with the CI was "positive."

Respondent Feltham testified that at this time, the Department's policy was there had to be a minimum of two controlled buys before a warrant could be obtained. He asserted that the sergeant had to be present with the CI at all times, but not the affiant.

Respondent Feltham agreed with Baez that the Bronx DA's Office was very hectic for getting search warrants. If the warrant was not obtained in the morning, one had to wait until the afternoon, when very few judges were available.

On September 13, 2007 (a Thursday), Respondent Feltham said, the CI pointed out an apartment on Webster Avenue as a location where crack was being sold. Both the detective and Respondent Vargas were present. The CI was given a sum of money and they "sent him on his way." He came back with narcotics. Afterward, Respondent Feltham prepared the DD-5 (RX A) and a voucher.

Respondent Feltham worked the next day, but Saturday, September 15, 2007, was his first RDO. He received a phone call that day from Respondent Vargas, who told him that "the second buy" was performed, and that he should do the paperwork on Monday (his first day back from his RDOs), and obtain the warrant. Respondent Feltham asserted that it was not unusual at the time for supervisors to perform CI buys by themselves. There was no policy forbidding it.

Respondent Feltham came in early on the 17th to get the warrant and did the paperwork for the second buy, including the DD-5 (DX 2). He retrieved the second-buy narcotics from a locker (Respondent Vargas had given him the combination) and vouchered them. Respondent Vargas had already pulled the voucher, the detective just had to fill it out.

Respondent Feltham testified that at this time, there was no specific location within the command to store narcotics evidence, because it was not a precinct. Instead, they used the sergeant's locker in the module's room, to secure the evidence until it was transmitted to the lab or brought to the precinct of occurrence. Thus, on September 17, 2007, after filling out the voucher, he put the drugs back in the locker so that Respondent Vargas could sign off on it.

At the time of trial, however, there was a safe, and at "the end of every night," the contents were emptied and brought to the borough by an assigned officer.

Respondent Feltham testified that on September 17, 2007, he went to his computer, copied the information from the first buy, and pasted it into the second-buy document. He also typed up the search warrant application, using a prior sample.

Respondent Feltham admitted that there were several errors in DX 2. The date the report was prepared was listed as September 15, 2007, it should have been September 17, 2007. Respondent Feltham stated that he changed what he pasted from the first DD-5 to read that Respondent Vargas was present with the CI. However, for the person that gave the CI the buy money, Respondent Feltham left his own name there, instead of changing it to the sergeant.

Respondent Feltham, using a template, prepared the paragraph for the first buy in the search warrant application (RX A). He copied the information and pasted it into the paragraph for the second buy. He changed it to read that Respondent Vargas was present with the CI, and "I guess at the time I thought I was done with," or possibly believed that Respondent Vargas counted as the deponent because he was at that buy.

Respondent Feltham testified that he did not intend to give the perception that he was present at the second buy. He stated that because he only had to be present for one of the buys, it made no difference to the judge or ADA whether he was there for the second buy. He was

rushing when filling out the paperwork, and it came back to hurt me ” When he went to see ADA Baez, he only spoke to her for less than a minute He asserted that he told Baez that he was present for the first buy, but not the second

Respondent Feltham stated that he went with the CI to see the judge on September 17, 2007 He believed at the time that all the information in the affidavit was correct The judge they saw, however, was not the regular judge, who generally asked many questions The judge that day only asked if the contents of the affidavit were true “I’d just like to say that this whole thing would have been caught” if the regular judge was there “Now we had another judge and this judge didn’t ask any questions ”

Respondent Feltham testified that he executed the search warrant, and narcotics were found at the location

On cross-examination, Respondent Feltham testified that at the time of trial, he generally had the ADA type up the search warrant applications

Respondent Feltham testified that he left the paperwork in Respondent Vargas’s locker At some point, Respondent Vargas signed off on that Department paperwork from the second buy Respondent Vargas did not tell him why he did not prepare his own voucher Respondent Feltham admitted that on September 17, 2007, there were other supervisors, from other Bronx Narcotics modules, besides Respondent Vargas, that could have signed the voucher prepared by the detective Respondent Feltham alleged that “we didn’t go to other teams to sign off on this paperwork unless we were ordered to ”

Respondent Feltham described the module locker that existed in September 2007 as a regular, full-length police locker with a shelf and a combination lock

On re-direct examination, Respondent Feltham contended that it was not required at the time to get a non-module supervisor to sign off on paperwork if your own supervisor was not available. He agreed this "was not how it was typically done at that time."

Respondent Vargas

Respondent Vargas had been a member of the Department for a little over seventeen years. He had been a Sergeant since July 2001, and had been in Bronx Narcotics for close to six years. In September 2007, he was a team leader for team 46-02 in the 46 Precinct module, supervising ten to twelve detectives. He covered two precincts, which was atypical, as was supervising that many detectives. Each week he read 50 to 75 DD-5s, as well as other paperwork. He worked on five to eight search warrants that month. He and Respondent Feltham had done perhaps 80 search warrants together. He was aware of no discrepancies other than what was raised in the instant case.

Respondent Vargas recalled the search warrant application from September 17, 2007. He stated that it was common practice to go on CI buys alone. He knew of no policy forbidding it, and his superiors were well aware that he was doing so.

Respondent Vargas testified that if he had seen the error on the DD-5, he never would have signed it.

Respondent Vargas stated that a problem arose regarding the storage of evidence because he and Respondent Feltham had different RDOs: Sunday/Monday, and Saturday/Sunday, respectively. If a CI buy was made on a Saturday, which the sergeant worked but the detective had off, Respondent Vargas would store the narcotics evidence in his locker. He said he was the only one with the combination. Respondent Feltham would voucher the evidence that Monday.

Respondent Vargas claimed that there was no other way to store the evidence. It took as many as six days for the evidence to get to the lab.

On cross-examination, Respondent Vargas admitted that there were other members of his team working on September 15, 2007. He agreed that there could be safety issues raised by going alone with a CI on a buy. He could also see an integrity problem, but not "when it pertains to me, no."

Respondent Vargas testified that he probably pulled a voucher for the September 15, 2007, evidence. He would not have taken a voucher without making an entry in the voucher log.

Respondent Vargas testified that his practice was "once I come back" from the RDO period, "I review all the paperwork." He read the DD-5 for the second buy.

Respondent Vargas admitted that he should have tried to get the second-buy evidence transmitted to the lab on Tuesday, September 18, 2007, "but with my workload, I would have forgotten, yes." He admitted that vouchering the property two days after it was taken into custody was not "upon it being taken into custody," as required by Patrol Guide § 218-01.

On re-direct examination, Respondent Vargas stated that in September 2007, the passage of five days for narcotics evidence to get to the lab was not untimely.

FINDINGS AND ANALYSIS

The specifications against both Respondents mirror each other. The gravamen of the charges is that the Respondents were involved in submitting incorrect paperwork and not vouchering property in a prompt manner. The charges relate to a narcotics investigation in September 2007. A confidential informant was used to make two controlled buys of crack

cocaine, which took place at a building on Webster Avenue in The Bronx. A search warrant was then obtained and executed.

Incorrect Paperwork

Specification Nos. 1 & 2 against Respondent Feltham

Specification No. 1 against Respondent Vargas

This case began with an anonymous allegation to IAB that Respondent Vargas was performing drug operations with a CI in the presence of no other Department members. This raised an integrity and safety issue, and certainly IAB and the Department Advocate's Office saw it as misconduct (see Specification No. 2 against Respondent Vargas, infra). It was also alleged that Respondent Feltham was stating in paperwork that he was present at certain controlled buys when he was, in fact, not present.

In the course of investigating the allegation, IAB reviewed the paperwork of both Respondents. The investigator found a discrepancy on one date and this is the basis for the first set of charges. In a DD-5 for a controlled narcotics buy (RX A) on Saturday, September 15, 2007, Respondent Feltham wrote that Respondent Vargas gave the CI buy money and sent him out. The detective wrote that the CI returned and gave Respondent Feltham the drugs. The same information was reflected in the search warrant application (DX 1).

In fact, Respondent Feltham was not there because his RDOs were Saturday and Sunday. Respondent Vargas handled this buy himself and the CI gave the drugs to him. This conduct led to Specification Nos. 1 and 2 against Respondent Feltham and Specification No. 1 against Respondent Vargas submitting inaccurate paperwork, wrongfully making false entries in Department records, and failing to supervise the paperwork.

All sides at trial agreed that Respondent Feltham's error was unintentional. Respondent Feltham explained how it happened. The first of the controlled buys for the operation in question was on Thursday, September 13, 2007, and both Respondents were present. For that first DD-5, and the warrant application, Respondent Feltham accurately wrote that both officers were present with the CI. Money was handed out, and the CI returned and gave the drugs to Respondent Feltham. When the detective wrote the second DD-5 (DX 2), he copied and pasted from his computer file on the first DD-5, intending to amend the information to show the correct facts. In his haste, he failed to remove his name from the information concerning the second buy. Respondent Feltham typed up the warrant application himself and brought it to the DA's Office on Monday, September 17, 2007.

The ADA did not catch the error, at trial, she noted her personal health issues from that day. When Respondent Feltham and the CI went before the warrant judge, the detective stated, answering the judge's question, that the information was told to him by the CI and the detective believed it to be true and accurate. The judge and Respondent Feltham signed the application. The judge asked the CI questions about the buys themselves, and the location, but not who his handlers were. The judge then issued the warrant (see RX B, transcript of warrant application proceeding before judge).

It is easy to follow Respondent Feltham's copy-and-paste procedure and see how it led to the error. The DD-5s are almost identical and contain other, immaterial typographical errors. In the second paragraph, both DD-5s list the buy as occurring in 2006 (after the correct 2007 date had been introduced), and both contain a double period after the location is given. In the third paragraph, 'approx' is spelled "appox."

For the second DD-5, Respondent Feltham changed most of the pertinent information, first stating, correctly, that only Respondent Vargas was present with the CI. But for the individual that gave out the money and took the drugs from the CI, Respondent Feltham did not change his own name to that of the sergeant.

Respondent Feltham testified that he prepared the warrant application using the information in the DD-5s. For the second buy, he pasted over "deponent was present with CI" to "Sergeant Edward Vargas was present with CI", the double space after "Vargas" is evidence of the pasting. But Respondent Feltham did not change "Deponent gave the CI ten dollars," or anything else that occurred after that.

Respondent Feltham conceded his guilt of Specification No. 1, filing a search warrant application with inaccurate information. Therefore, the Court finds him Guilty of that specification.

Respondent Feltham contested, however, his guilt of Specification No. 2. He argued that he did not "wrongfully cause false entries" to be made in the second DD-5 because the mistake was unintentional. It is essentially a question of semantics: does false mean intentionally untrue? The meaning of the specification should be examined in light of the Patrol Guide section charged, § 203-05 (4). The section requires that members make "accurate, concise entries in Department records." The procedure is meant to ensure accuracy of records, but intentionally lying in paperwork is another matter. The Court concludes that Respondent Feltham's unintentionally-inaccurate entries on the DD-5 were still wrongful within the meaning of the applicable Patrol Guide section. Thus, the Court finds Respondent Feltham Guilty of Specification No. 2.

Respondent Vargas is charged with failing to supervise Respondent Feltham's preparation of the paperwork. The allegedly-unsupervised paperwork is "including but not limited to" the search warrant application. That application was prepared by Respondent Feltham on Monday, September 17, 2007. However, as both the sergeant and IAB investigator testified, Respondent Vargas's RDOs were Sunday and Monday. The roll call (DX 5) reflects this as well. He was not working on the day the error was made, so he cannot be held liable for failing to supervise Respondent Feltham in that regard. The fact that Respondent Feltham was under the supervision of Respondent Vargas with regard to the drug operation in question does not change the result. See Case Nos. 83041/07 & 85211/09, signed June 30, 2010 (sergeant found Not Guilty of failing to supervise where he instructed the arresting officer, part of his team, on the proper completion of the vouchering procedure, then went end of tour, the arresting officer failed to voucher the property until three days later).

Operating With a Confidential Informant

Specification No. 2 against Respondent Vargas

Respondent Vargas is charged with improperly conducting a narcotics buy in the presence of only himself and the confidential informant. This was the second buy in the operation in question, and took place on Saturday, September 15, 2007. This action was not in dispute, but Respondent Vargas argued that it was not improper.

Patrol Guide § 212-68 governs the use of confidential informants. Respondent Vargas is correct insofar as the procedure does not specifically prohibit a supervisor from meeting and operating with a CI on his own. The awkward wording of the specification reflects this. Respondent Vargas is accused of not being "physically present at all meetings between a contact

officer and a Confidential Informant ” Of course, there was no meeting between the contact – Respondent Feltham – and the CI What the Department is trying to say is that there should have been such a meeting, and that Respondent Vargas’s misconduct is the failure to ensure that the CI met with himself *and* Respondent Feltham

The specification is actually referring to Interim Order 23, which amended Patrol Guide § 212-68, and added a Note on page 6 of 10 The Note states that a supervisor must be present at all meetings between a contact and a CI, including controlled buys A literal reading reveals no outright prohibition on a supervisor meeting the CI without the contact being present

The Patrol Guide is at its root a guide to proper police conduct See Case Nos 82103.06 82873/07 & 83810/08, signed Oct 16, 2009 It cannot cover all possible scenarios Controlled narcotics buys are scenarios where safety of both the Department member and the CI must always be taken into account The integrity of the operation is also a factor in every narcotics operation That is the point of the Note to ensure that at least two members are present with the CI It would be incongruous with the purpose of the Note to allow a supervisor to operate on his own

Moreover, the Note states that the supervisor must review and sign the Confidential Informant Information Change, Activity and Payment report He must complete the captions in the “verifying supervisor” section If a payment is made to the CI, “the supervisor will also verify the payment by signing under the appropriate caption in the Payment’ section of the report ’ The Court notes that if there is no subordinate to review and verify, this requirement is superfluous

The testimony of Mullane, the commanding officer of Narcotics Borough Bronx, and Corbett supports the Court’s analysis Both testified that while the Patrol Guide does not

specifically prohibit a supervisor conducting a controlled buy with a CI with no other member present, it is still misconduct

Therefore, the Court concludes that a holistic reading of the applicable Patrol Guide section prohibits a supervisor from conducting a controlled buy with the CI in the presence of no other Department members. Accordingly, Respondent Vargas is found Guilty of Specification No. 2

Specification Nos. 3 & 4 against both Respondents

The Respondents are charged with failing to ensure that evidence was vouchered and sent to the Police Laboratory in a prompt manner. After conducting the second controlled buy on Saturday, September 15, 2007, by himself, Respondent Vargas took possession of the one bag of crack purchased by the CI. The sergeant placed this in a locked locker at the 46 Precinct narcotics module.

The bag of crack was vouchered by Respondent Feltham on Monday, September 17, 2007. On the voucher, N838934 (DX 4), the date of preparation is listed, erroneously, as September 14, 2007, the previous Friday. Corbett verified through the NBBX property log that this voucher was "pulled," or taken from the command's numerically-ordered supply, on the 17th. Respondent Feltham then placed the voucher and evidence back inside the locker so that it could be signed by a supervisor the next day. Tuesday, September 18, 2007, was Respondent Vargas's next scheduled tour. He signed the voucher on that day, but only "dropped off the voucher and the narcotics" at the 46 Precinct two days later on Thursday, September 20, 2007. This was confirmed by the 46 Precinct command log.

Respondent Feltham had his RDOs on Saturday and Sunday, the buy took place with only Respondent Vargas on Saturday, and he left the evidence in the locker, Respondent Vargas had his RDOs on Sunday and Monday, Respondent Feltham removed the evidence from the locker on Monday when he returned from his RDOs, prepared the voucher, and returned it and the evidence to the locker, Respondent Vargas signed the voucher on Tuesday when *he* returned from his RDOs, and brought it and the evidence to the precinct of occurrence on Thursday

Respondent Feltham is charged with misconduct between Monday September 17, 2007, and Thursday, September 20, 2007. It is alleged in Specification No. 3 that he failed to voucher the bag of crack, which came into possession of the Department on Saturday, September 15, 2007, "until several days after it was taken into police custody." Yet his first day back after it was taken into custody was Monday, September 17, 2007. He could not possibly have vouchered it "until several days" later. Respondent Feltham cannot be held liable for the unvouchered time if he had those days off. As Corbett testified, someone working on the 15th should have vouchered it, but this was not Respondent Feltham's responsibility. Therefore, the Court finds him Not Guilty of Specification No. 3.

Respondent Vargas, on the other hand, was obviously working on Saturday, September 15, 2007, and was responsible for the vouchering of the evidence that day, knowing that he would be RDO the next two days. Essentially, it seems that Respondent Vargas left the vouchering for Respondent Feltham to perform when the detective returned to work on Monday. He gave no explanation why it was not practicable to do the vouchering on the 15th. Leaving the crack in the locker is not in itself the issue, the locker was locked, and it is proper to store evidence in a property locker. The problem is that the crack was sitting there, unvouchered, with no way to trace it to any given case but for the memory of Respondent Vargas. The fact that

"this is the way it was done in September 2007" is not an excuse for improper evidence control

Therefore, Respondent Vargas is found Guilty of Specification No 3

Both Respondents are Guilty of the fourth specification against each of them This concerns arranging for the evidence to be sent to the lab At latest, the vouchering of the evidence was finished on Tuesday, September 18, 2007, because that is when Respondent Vargas signed off on the voucher The bag of crack, however, did not get sent to the lab until Thursday, September 20, 2007

Patrol Guide § 218-04 directs that controlled-substance evidence is to be sent to the lab promptly The procedure contemplates that the patrol borough is to be notified the day that the evidence is stored in the property locker Thus, the borough is to be notified "prior to 0030 hours" that the evidence is "being forwarded to patrol borough for delivery to the Forensic Investigation Division" Patrol Guide § 218-04 (1) Prior to 0100 hours, the evidence is to be delivered to the borough by command personnel Patrol Guide § 218-04 (20)

Both Respondents, having participated in the recovery and vouchering process were responsible for getting the evidence to the lab in a prompt manner Respondent Feltham filled out the voucher, placing his name as the member that took the crack into custody Respondent Vargas actually took the property into custody

Their defense, again, was essentially that this was the way it worked at the time in Bronx Narcotics Yet they gave no explanation as to what it was that prevented them from notifying the precinct of occurrence that there was narcotics evidence to be delivered to the lab

Accordingly, the Respondents are found Guilty of Specification No 4 against each of them

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v Board of Education, 34 N Y 2d 222 (1974). Respondent Feltham was appointed to the Department on July 16, 1999. Respondent Vargas was appointed to the Department on August 30, 1993. Information from their personnel files that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

The Respondents have been found Guilty of different offenses relating to the same general incident. Respondent Feltham has been found Guilty of completing an inaccurate DD-5 and search warrant application arising from a series of controlled narcotics buys. Respondent Vargas has been found Guilty of conducting the second of those buys with the CI in the presence of no other Department members. He has also been found Guilty of failing to voucher promptly the purchased narcotics. Both have been found Guilty of failing to forward the evidence to the lab in a timely manner. The Department recommended a penalty of 30 vacation days and one year on dismissal probation for Respondent Feltham. For Respondent Vargas, the Department recommended a penalty of 30 vacation days.

It is true that Respondent Feltham's carelessness led him to write in a court document that he was present at the second buy when he was not. But it is also undisputed that this was an unintentional error borne of haste and failure to proofread. Copying-and-pasting is a shortcut, one that usually results in no ill consequences. Here, however, Respondent Feltham took shortcuts, but failed to edit himself.

Several cases have arisen in the Trial Room from the following erroneous-paperwork scenario. A vice enforcement team made several arrests for prostitution after an individual

agreed to engage in sexual activity for consideration with an undercover officer (UC) These arrests were processed by the DA's Office through supporting deposition, meaning that the UC had to fill out a form stating the defendant's name, time, place and location of the incident, the activity agreed to, the consideration, and any other statements made by the defendant The supporting deposition was faxed to the DA's Office, where a police officer wrote a criminal court complaint stating that she had been informed by the UC that the alleged conduct had occurred The supporting deposition was a check-a-box form but still a sworn affidavit To save time, the field team, including the UC, took it upon themselves to share responsibility for filling out all the arrest paperwork In several instances, a member other than the UC signed the supporting deposition, writing down the UC's number What this meant, in reality, is that someone other than the UC swore that he was the UC and had observed the alleged conduct

In these cases, and other similar ones, the penalty imposed was 30 vacation days See *Case Nos 83627, 83632/08*, signed Jan 12, 2010, *Case No 84029/08*, signed Aug 4, 2009, *Case No 84026/08*, signed Mar 30, 2009, *Case No 84027/08*, signed Mar 10, 2009 Here, the Department argued that Respondent Feltham's misconduct was worse because it led to incorrect information on Department and court records


The Court sees this as a distinction without a difference There was just as bad, if not worse, incorrect information on the prostitution affidavits, it was just harder to uncover Specifically, the error was that the individual who swore to the accuracy of the affidavit was not the person actually listed as signing it If anything, in the Court's view, the misconduct in the prostitution affidavits was intentional and arose from a desire to skip required steps Respondent Feltham's error was unintentional and arose from a failure to look over his work

Accordingly, the Court recommends that Respondent Feltham forfeit 30 vacation days as a penalty for the all of the misconduct in this case

With regard to Respondent Vargas, as the Court noted in the Findings section, narcotics operations are always dangerous undertakings. The ever-present integrity issues are magnified when only one Department member is present with a CI. The use of a CI itself increases the danger to non-members of the service.

Nevertheless, the Court has considered that Respondent Vargas was acting in good faith. The thorough IAB investigation looked at the entire month of September 2007 for both Respondents, and found discrepancies on this one operation. "With consideration of the totality of circumstances and his acting in good faith," *Case No. 79274/03*, signed Nov. 29, 2004, the Court recommends that Respondent Vargas forfeit 30 vacation days as a penalty for all of the misconduct in this case. *See 79274/03* (20 vacation days for failing to notify supervisor after developing a work relationship with an informant, transporting this unregistered informant in a Department vehicle without permission, and using him on a controlled narcotics buy), *Case No. 83259/07*, signed Nov. 18, 2009 (10 vacation days for sergeant who, after releasing arrestee whose property turned out to be religious amulet and not narcotics, failed to ensure that voucher and field test report were filled out, he also failed to ensure that precinct-of-occurrence desk officer was informed of what had occurred and that command log entry was made).

APPROVED
JUL 19 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
DETECTIVE MICHAEL FELTHAM
TAX REGISTRY NO 924353
DISCIPLINARY CASE NO 85026/09

In 2009, Respondent Feltham received an overall rating of 4.5 “Extremely Competent/Highly Competent” on his annual performance evaluation. He was rated 5.0 “Extremely Competent” on his two previous evaluations. He has been awarded four medals for Excellent Police Duty, two for Meritorious Police Duty, and one Honorable Mention. [REDACTED]

[REDACTED] The Respondent has no prior formal disciplinary record.

For your consideration



David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
SERGEANT EDWARD VARGAS
TAX REGISTRY NO 905216
DISCIPLINARY CASE NO 85027/09

The Respondent received an overall rating of 5.0 “Extremely Competent” on his last three annual performance evaluations. He has been awarded six medals for Excellent Police Duty. [REDACTED]

[REDACTED] Between July 2008 and November 2010, he was on Level I Force Monitoring for receiving three or more Civilian Complaint Review Board complaints within a year. He has no prior formal disciplinary record.

For your consideration



David S. Weisel
Assistant Deputy Commissioner – Trials